No. 93-5418

In the Supreme Court of the United States

OCTOBER TERM, 1993

ORRIN S. REED, PETITIONER

v.

ROBERT FARLEY, SUPERINTENDENT,
INDIANA STATE PRISON, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

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QUESTION PRESENTED

Whether a state prisoner is entitled to habeas corpus relief under 28 U.S.C. 2254 for a violation of Article IV(c) of the Interstate Agreement on Detainers (IAD), which requires a State that has lodged a detainer against a prisoner to try the prisoner on the charges underlying the detainer within 120 days after he is brought into that State.

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INTEREST OF THE UNITED STATES

The Interstate Agreement on Detainers (IAD) provides a means whereby a prisoner being held in one jurisdiction (the sending State) may be transferred to another jurisdiction (the receiving State) for trial on charges pending against him in the latter jurisdiction. Under Article IV(c) of the IAD, when a receiving State lodges a detainer against a prisoner and requests custody of him in order to try him on the charges underlying the detainer, it must bring him to trial within 120 days after he is brought into the receiving State. This case presents the question whether a violation of Article IV(c) is cognizable in a habeas corpus proceeding under 28 U.S.C. 2254.

The United States has a substantial interest in the outcome of this case. The United States is a party to the IAD, see 18 U.S.C. App. § 2, Art. II(a), at 702, and is subject to the 120-day provision in Article IV(c), cf. *United States* v. *Mauro*, 436 U.S. 340, 354 (1978). Moreover, although this case concerns the availability of habeas relief to state prisoners, the Court's analysis of that issue is likely to affect the disposition of claims for collateral relief by federal prisoners under 28 U.S.C. 2255.

STATUTORY PROVISIONS INVOLVED

Article IV of the Interstate Agreement on Detainers provides, in pertinent part (see 18 U.S.C. App. § 2, at 703):

> (c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

Article V of the Interstate Agreement on Detainers provides, in pertinent part (see 18 U.S.C. App. § 2, at 703-704):

> (c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

Section 2254 of Title 28 provides, in pertinent part:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

STATEMENT

1. In December 1982, petitioner was charged by an information filed in Fulton County, Indiana, with theft and with being an habitual criminal. J.A. 1, 175. Based on those charges, Indiana officials lodged a detainer with the Federal Penitentiary in Terre Haute, Indiana, where petitioner was then incarcerated on unrelated charges. J.A. 156, 175.[1] Indiana officials also asked that petitioner be transferred to state custody pursuant to Article IV of the Interstate Agreement on Detainers (IAD) for trial on the charges underlying the detainer. J.A. 4-6.[2] Petitioner was transferred from federal to state custody on April 27, 1983. J.A. 156. Under Article IV(c) of the IAD, his trial was required to begin within 120

[1] A detainer is "a request filed by a criminal justice agency with the institution in which a prisoner is incarcerated, asking that the prisoner be held for the agency, or that the agency be advised when the prisoner's release is imminent." *Fex* v. *Michigan*, 113 S. Ct. 1085, 1087 (1993).

[2] Under the IAD, either the prisoner or the prosecuting officials may initiate the process for disposing of the charges underlying a detainer. If the prisoner initiates the process by requesting a disposition of the charges, he must, under Article III(a), be brought to trial within 180 days after his request has been received by the prosecuting officials. *Fex*, 113 S. Ct. at 1088-1091. If the prosecuting officials initiate the process, the prisoner must, under Article IV(c), be brought to trial "within one hundred and twenty days of the arrival of the prisoner in the receiving State." (When the United States is the "sending State," the 120-day period begins when the prisoner is transferred from federal to state custody.) The 180-day period in Article III(a) and the 120-day period in Article IV(c) are known as the "speedy trial" provisions of the IAD.

days after the transfer—*i.e.*, on or before August 25, 1983—in the absence of a continuance or a tolling event.[3]

Before the 120-day period prescribed in Article IV(c) expired, petitioner appeared at two pretrial conferences at which the trial date was discussed. At the first conference, on June 27, 1983, the court set a trial date of September 13, 1983, which was beyond the 120-day period, but petitioner did not object. At the second conference, on August 1, 1983, the court reset the trial date to September 19, 1983; petitioner again failed to object. J.A. 156-157.

On August 29, 1983, four days after the 120-day period expired, petitioner filed an "Affidavit of Emergency" and "Petition for Discharge," alleging that the State's failure to bring him to trial within the 120-day period violated Article IV(c). J.A. 157; see also J.A. 94-96. The court denied the petition as untimely. J.A. 113-114; see also Br. in Opp. 2-3.

Petitioner's trial began on October 18, 1983. He was convicted and sentenced to 34 years' imprisonment as an habitual offender. J.A. 2.

The Indiana Supreme Court affirmed the conviction. J.A. 152-168. It rejected petitioner's Article IV(c) claim, stating: "A defendant applying for discharge pursuant to the [IAD] may be precluded from relief if he fails to object to a date beyond the requisite period at the time the date was set or

[3] Article IV(c) states that "trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance." Article VI(a) of the IAD provides for tolling of the 120-day period prescribed in Article IV(c):

> In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

during the remainder of the time limit." J.A. 157. Petitioner was subsequently denied post-conviction relief in the state courts. J.A. 169-187.

2. Petitioner then filed a petition for relief under 28 U.S.C. 2254 in the United States District Court for the Northern District of Indiana. The district court denied the petition. J.A. 188-198. It rejected petitioner's Article IV(c) claim, holding that "a significant amount of the delay of trial is attributable to the many motions filed either by the petitioner or filed on the petitioner's behalf," and that the delay caused by petitioner's motions was excludable in determining whether petitioner had been brought to trial within the 120-day period prescribed in Article IV(c). J.A. 195-196.

3. The court of appeals affirmed. J.A. 199-211. It began by considering what standard to apply in analyzing petitioner's claim. It observed that this Court "has yet to decide" (J.A. 202) under what circumstances a federal court may grant habeas corpus relief based on a prisoner's claim that he is in custody under a state criminal conviction "in violation of the * * * laws * * * of the United States" within the meaning of 28 U.S.C. 2254(a). The court of appeals noted that this Court has addressed that issue under 28 U.S.C. 2255, "which applies to federal prisoners, but the language of [which] * * * is identical in all material respects" to Section 2254(a). J.A. 203. In particular, the court of appeals stated, the Court's decisions in *Davis* v. *United States*, 417 U.S. 333 (1974), and *Hill* v. *United States*, 368 U.S. 424 (1962), "call on us to search for 'exceptional circumstances' amounting to 'a fundamental defect which inherently results in a complete miscarriage of justice'" to determine whether relief is available under Section 2255 for a claim based on a "law[ ]," as distinguished from the Constitution, of the United States. J.A. 203. But the court of appeals thought that "such formu-

las rarely settle concrete disputes" and that "[v]erbal analysis" of the standard articulated in *Davis* and *Hill* "is unlikely to get us anywhere." J.A. 203, 204. The court ultimately determined that *Stone* v. *Powell*, 428 U.S. 465 (1976), "establishes the proper framework for evaluating claims under the IAD." J.A. 209. In *Stone*, this Court held that, in ruling on a petition by a state prisoner under Section 2254, a federal court should not consider a claim that evidence from an unconstitutional search and seizure was introduced at the prisoner's trial if the prisoner had "an opportunity for full and fair litigation of [the] claim in the state courts." 428 U.S. at 469.

Under the *Stone* framework, the court of appeals stated, "[u]nless a state fails to entertain and resolve claims under the IAD, collateral review is unavailable in federal court." J.A. 209. Applying that principle here, the court of appeals held that petitioner's claim of a violation of the "speedy trial" provision in Article IV(c) of the IAD was not cognizable under Section 2254, because the Indiana courts adequately "entertained and resolved [his] contention that the trial began too late." J.A. 209.

4. The court of appeals denied petitioner's petition for rehearing and suggestion of rehearing en banc. J.A. 212-214. Judge Cudahy and Judge Ripple dissented from the denial of rehearing en banc. In a written statement explaining his dissent, Judge Ripple observed that the panel's opinion "sets us on a different course from that adopted by the other circuits." J.A. 212.

SUMMARY OF ARGUMENT

A. The question whether petitioner's claim is cognizable on collateral review is governed by the standard that this Court articulated in *Hill* v. *United States*, 368 U.S. 424 (1962). There, and in other similar cases, this Court has held

that when a prisoner brings a collateral challenge to his criminal conviction in federal court based on a "law of the United States," rather than a claim that is jurisdictional or constitutional in nature, collateral relief is available only if the claimed error involves "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure." 368 U.S. at 428.

The *Hill* standard is applicable here. Contrary to petitioner's assertion, that standard is not limited to claims brought by federal prisoners under 28 U.S.C. 2255; it applies equally to non-constitutional claims brought by state prisoners under 28 U.S.C. 2254. And the standards for non-constitutional claims govern petitioner's claim under Article IV(c) of the IAD, notwithstanding his assertion that his claim is "of constitutional dimension."

We do not agree with the court of appeals that the *Hill* standard must be jettisoned on the ground that it is too vague to be useful. The vast majority of the lower federal courts have agreed on the manner in which the *Hill* standard applies to IAD claims, holding that such claims are not cognizable on collateral review in the absence of a showing of actual prejudice.

B. The lower courts are correct in requiring proof of actual prejudice. This Court has made clear that it is not sufficient for a prisoner bringing a collateral attack on his conviction to prove that an error occurred of the sort that would have led to reversal of the conviction on direct review. Rather, the prisoner must show that the error caused actual prejudice to his right to a fair trial.

In arguing that proof of actual prejudice is not required in this case, petitioner relies primarily on Article V(c) of the IAD, which states that if a prisoner is not brought to trial within the 120-day period prescribed in Article IV(c), the

court with jurisdiction over the charges shall dismiss them with prejudice. Article V(c), however, addresses the relief to be granted in a criminal proceeding initiated under the IAD. It does not address the quite separate question of the scope of the remedy for an IAD violation when the violation is raised on collateral attack. That question is governed instead by this Court's habeas corpus jurisprudence, which makes clear that collateral relief, at least for non-constitutional claims, is not available in the absence of proof of actual prejudice.

C. Petitioner does not allege actual prejudice, and there is no indication that he suffered any such prejudice as a result of the alleged IAD violation in this case. Petitioner can show prejudice only if he can show that the alleged error created a significant risk of an unreliable disposition of the charges against him. Because the alleged violation in this case did not increase the risk of an unreliable result in petitioner's case, he was properly denied relief under Section 2254.

ARGUMENT

PETITIONER'S CLAIM OF A VIOLATION OF ARTICLE IV(C) OF THE INTERSTATE AGREEMENT ON DETAINERS IS NOT COGNIZABLE ON COLLATERAL REVIEW

A. The Question Whether Collateral Relief Is Available For A Violation Of Article IV(c) Of The IAD Is Governed By The *Hill* Standard

In *Hill* v. *United States*, 368 U.S. 424 (1962), the district court violated Rule 32(a) of the Federal Rules of Criminal Procedure by failing to invite the defendant to address the court personally at sentencing. Based on that error, the defendant sought to vacate his sentence under 28 U.S.C. 2255. This Court denied relief, holding that the district court's failure to follow the formal requirements of Rule 32(a) was not an error that could be raised on collateral attack. 368 U.S. at 426.

The Court found that the error in *Hill* did not present one of the "exceptional circumstances where the need for the remedy afforded by the writ of *habeas corpus* is apparent." 368 U.S. at 428. That is, collateral relief was not available, because the error was not constitutional or jurisdictional in nature, and it did not constitute "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure." *Ibid.*[4]

The court of appeals in this case determined that petitioner's claim presented a "statutory question" arising under the IAD, not a constitutional question. J.A. 202. It noted that this Court has applied the "fundamental defect" standard from *Hill* in cases involving collateral challenges based on non-constitutional claims, but it declined to apply that standard here, concluding that it provides inadequate guidance on the question whether violations of Article IV(c) of the IAD are cognizable on collateral review. J.A. 203-204.

Unlike the court of appeals, we believe the *Hill* standard is sufficiently clear to provide useful guidance in reviewing non-constitutional claims on collateral attack. We therefore do not join the court of appeals in urging its abandonment in favor of a different formulation.

1. This Court has consistently applied the standard articulated in *Hill* to cases involving collateral attacks based on non-constitutional claims. In *Davis* v. *United States*, 417 U.S. 333 (1974), a convicted defendant sought relief from

[4] The reference in *Hill* to omissions "inconsistent with the rudimentary demands of fair procedure" appears to be simply another articulation of the "fundamental defect" standard, as applied to omissions rather than affirmative errors. The Court has described the *Hill* test for non-constitutional errors by reference only to the "fundamental defect" language, see *United States* v. *Addonizio*, 442 U.S. 178, 185 (1979); *Brecht* v. *Abrahamson*, 113 S. Ct. 1710, 1720 n.8 (1993), and we follow that course here.

his conviction under Section 2255 based on the claim that the conduct of which he was convicted did not constitute a crime. The Court confirmed that collateral relief from criminal convictions can be granted based on non-constitutional claims, but only when those claims satisfy the standard adopted in *Hill*. Undertaking that inquiry, the Court reasoned that if Davis's claim was well founded, "then [his] conviction and punishment are for an act that the law does not make criminal." 417 U.S. at 346. The Court found "no room for doubt that such a circumstance 'inherently results in a complete miscarriage of justice' and 'present[s] exceptional circumstances' that justify collateral relief under § 2255." *Id.* at 346-347 (quoting *Hill*, 368 U.S. at 428). The Court accordingly held that Davis's claim "is cognizable in a § 2255 proceeding." *Id.* at 347.

On two occasions since *Davis*, the Court has applied the "fundamental defect" standard to determine whether collateral relief was available for a non-constitutional claim. In *United States* v. *Timmreck*, 441 U.S. 780 (1979), the Court held that collateral relief was not available for a prisoner's claim that the sentencing court violated Rule 11 of the Federal Rules of Criminal Procedure by failing to advise him before he entered a guilty plea that he would receive a mandatory special parole term of at least three years. 441 U.S. at 783-785. In so holding, the Court determined that the alleged violation of Rule 11 did not result in a "complete miscarriage of justice" or otherwise present exceptional circumstances warranting collateral relief. *Id.* at 783-784.

In *United States* v. *Addonizio*, 442 U.S. 178 (1979), the Court held that collateral relief was not available to review the claim by three federal prisoners that a postsentencing change in the policies of the United States Parole Commission prolonged their actual imprisonment beyond the period intended by the sentencing judge. 442 U.S. at 179. The Court stated that "unless the claim alleges a lack of jurisdiction or

constitutional error * * * an error of law does not provide a basis for collateral attack unless the claimed error constitute[s] 'a fundamental defect which inherently results in a complete miscarriage of justice.' " *Id.* at 185 (quoting *Hill*, 368 U.S. at 428). The Court concluded that the claim before it was not cognizable because, even accepting the claim as true, "the [sentencing] proceeding was not infected with any error of fact or law of the 'fundamental' character that renders the entire proceeding irregular and invalid." *Id.* at 186.

2. a. Petitioner contends that the "fundamental defect" standard enunciated in *Hill* and applied in *Davis*, *Timmreck*, and *Addonizio* should not be applied here. He first argues (Br. 31-36) that the *Hill* standard applies only to claims by federal prisoners under 28 U.S.C. 2255, and not to claims by state prisoners under 28 U.S.C. 2254.[5] As the court of appeals observed, however, *Hill* and the cases following it "were decided under 28 U.S.C. § 2255, which applies to federal prisoners, but the language of § 2254 and § 2255 is identical in all material respects, and the Court has concluded that the two are 'identical in scope'." J.A. 203 (quoting *Davis*, 417 U.S. at 343).

As the court of appeals indicated, the Court's decision in *Davis* rested heavily on its view that the scope of relief

[5] The fact that *Hill*, *Davis*, *Timmreck*, and *Addonizio* involved collateral challenges to federal convictions under Section 2255 does not indicate that the "fundamental defect" standard is inapplicable to challenges to state convictions under Section 2254; it indicates, instead, as petitioner acknowledges (Br. 34-35), that "few 'laws . . . of the United States' have any impact upon state criminal proceedings." See also *Developments in the Law: Federal Habeas Corpus*, 83 Harv. L. Rev. 1038, 1070-1071 (1970). The IAD is a congressionally sanctioned interstate compact, and as such has been held to be a law of the United States. See *Carchman* v. *Nash*, 473 U.S. 716, 719 (1985); *Cuyler* v. *Adams*, 449 U.S. 433, 438 (1981); see also *Casper* v. *Ryan*, 822 F.2d 1283, 1288 (3d Cir. 1987), cert. denied, 484 U.S. 1012 (1988); *Bush* v. *Muncy*, 659 F.2d 402, 406-407 (4th Cir. 1981), cert. denied, 455 U.S. 910 (1982); *Echevarria* v. *Bell*, 579 F.2d 1022, 1024-1025 (7th Cir. 1978).

available under Section 2255 is coextensive with that available under Section 2254. In rejecting the government's argument that relief was not available under Section 2255 for non-constitutional violations, the Court in *Davis* relied primarily on "the clear and simple language" of Sections 2254 and 2255 and the "unambiguous legislative history" of the latter provision, both of which "show[ ] that § 2255 was intended to mirror § 2254 in operative effect." 417 U.S. at 344. Because the Court understood Section 2254 to encompass non-constitutional claims brought by state prisoners, the Court concluded that Section 2255 must also be construed to encompass non-constitutional claims brought by federal prisoners.[6]

b. Petitioner next argues (Br. 27) that the *Hill* standard is inapplicable because the violation of Article IV(c) of the IAD that he alleges is "of constitutional dimension." The claim is "of constitutional dimension," he argues (Br. 26), because Article IV(c) "effectuates" the constitutional right to a speedy trial.

That argument is unavailing. In *Timmreck*, this Court applied the *Hill* standard in reviewing a claim alleging a violation of Fed. R. Crim. P. 11. In a prior decision involving direct review of a claim based on Rule 11, however, the Court described Rule 11 as "designed to assist the district judge in making the constitutionally required determination that a defendant's guilty plea is truly voluntary." *McCarthy* v. *United States*, 394 U.S. 459, 465 (1969). Thus, *Timmreck* makes clear that the *Hill* standard applies on collateral re-

[6] In other contexts, the Court has likewise indicated that the scope of collateral relief available to federal prisoners under Section 2255 is coextensive with that available to state prisoners under Section 2254. See, *e.g.*, *Francis* v. *Henderson*, 425 U.S. 536, 539-540 (1976) (extending to claims under Section 2254 the "cause and prejudice" rule enunciated in *Davis* v. *United States*, 411 U.S. 233 (1973), for claims under Section 2255).

view of a non-constitutional claim, even if the claim is based on a provision that safeguards constitutional rights.

3. Although the Seventh Circuit recognized that in reviewing collateral challenges based on non-constitutional claims, "*Davis* and *Hill* call on [courts] to search for exceptional circumstances amounting to a fundamental defect which inherently results in a complete miscarriage of justice," J.A. 203 (internal quotation marks omitted), it declined to undertake that search in this case, based on its view that "such formulas rarely settle concrete disputes." *Ibid.* In our view, however, the *Hill* standard is a workable one that provides sufficient guidance to resolve collateral attacks based on non-constitutional claims, including collateral challenges based on asserted violations of the "speedy trial" provisions of the IAD.

The great majority of the lower courts have applied the *Hill* standard to hold that violations of the speedy trial provisions of the IAD are not cognizable on collateral review, at least in the absence of proof of actual prejudice. That holding has been adopted in eight circuits: the Seventh Circuit in this case, and the First, Second, Third, Fourth, Fifth, Sixth, and Eleventh Circuits in previous cases.[7] It appears that only the

[7] See *Fasano* v. *Hall*, 615 F.2d 555, 557-559 (1st Cir.) (denying relief under Section 2254 for violations of speedy trial provisions), cert. denied, 449 U.S. 867 (1980); *Reilly* v. *Warden*, 947 F.2d 43, 44 (2d Cir. 1991) (per curiam) (same), cert. denied, 112 S. Ct. 1227 (1992); *Cooney* v. *Fulcomer*, 886 F.2d 41, 45-46 (3d Cir. 1989) (same); *Casper* v. *Ryan*, 822 F.2d at 1288-1291 (same); *Kerr* v. *Finkbeiner*, 757 F.2d 604, 607 (4th Cir.) (violation of IAD's speedy trial provision not cognizable under Section 2254, "[a]s Kerr has introduced no evidence indicating that he has suffered any prejudice in his incarceration or in defending against the charges against him"), cert. denied, 474 U.S. 929 (1985); *Birdwell* v. *Skeen*, 983 F.2d 1332, 1334-1336 & n.11 (5th Cir. 1993) (granting relief under Section 2254 for violation of IAD's speedy trial provision where petitioner established actual prejudice); *Browning* v. *Foltz*, 837 F.2d 276,

Ninth Circuit has adopted the contrary position, holding that violations of the IAD's speedy trial provisions are cognizable on collateral review even in the absence of proof of actual prejudice. See *Johnson* v. *Stagner*, 781 F.2d 758, 761 (1986); *Tinghitella* v. *California*, 718 F.2d 308, 310-312 (1983) (per curiam); *Cody* v. *Morris*, 623 F.2d 101, 102-103 (1980).

To be sure, there is some disagreement among the lower courts with respect to the cognizability of different types of IAD violations. Specifically, the Third and Ninth Circuits distinguish between claims based on the IAD's "speedy trial" provisions and claims based on the IAD's "antishuttling" provisions.[8] The Third Circuit holds that claims based on the IAD's speedy trial provisions are not cognizable in the absence of proof of actual prejudice, *Cooney* v. *Fulcomer*, 886 F.2d 41, 45-46 (1989); *Casper* v. *Ryan*, 822 F.2d 1283, 1288-1291 (1987), cert. denied, 484 U.S. 1012 (1988), whereas claims based on the IAD's antishuttling provisions are generally cognizable, *United States* v. *Williams*, 615 F.2d 585, 589-591 (1980); see also *United States ex rel. Esola* v. *Groomes*, 520 F.2d 830, 836-839 (1975). The Ninth Circuit,

283 (6th Cir. 1988) (violations of speedy trial provisions of IAD not cognizable on collateral review), cert. denied, 488 U.S. 1018 (1989); *Stroble* v. *Egeler*, 547 F.2d 339, 340-341 (6th Cir. 1977) (per curiam) (district court order denying relief under Section 2254 for alleged violation of speedy trial provision is remanded for determination of whether violation caused prejudice and, if not, whether relief warranted in absence of prejudice); *Seymore* v. *Alabama*, 846 F.2d 1355, 1356-1357, 1359-1360 (11th Cir. 1988) (violation of speedy trial provision "will support no post-conviction relief pursuant to 28 U.S.C. Sec. 2254 when petitioner alleges no facts casting substantial doubt on the state trial's reliability on the question of guilt"), cert. denied, 488 U.S. 1018 (1989).

[8] Under the "antishuttling" provisions, once a prisoner is sent to a receiving State, the charges against the prisoner must be finally disposed of before the prisoner is returned to the sending State. See 18 U.S.C. App. § 2, Arts. III(d) and IV(e), at 703.

in contrast, holds that claims based on the IAD's speedy trial provisions are generally cognizable even in the absence of proof of actual prejudice, *Johnson* v. *Stagner*, *supra*; *Tinghitella* v. *California*, *supra*; *Cody* v. *Morris*, *supra*, whereas claims based on the IAD's antishuttling provisions are not, *Carlson* v. *Hong*, 707 F.2d 367, 368 (1983) (per curiam); *Hitchcock* v. *United States*, 580 F.2d 964, 966 (1978).[9]

[9] The Second, Fourth, Sixth, Eighth, and Tenth Circuits have, in addition, held that violations of the IAD's "antishuttling" provisions are not cognizable, at least in the absence of proof of actual prejudice. See *Edwards* v. *United States*, 564 F.2d 652, 653-654 (2d Cir. 1977) (per curiam) (violation of antishuttling provision not cognizable under Section 2255); *Bush* v. *Muncy*, 659 F.2d at 409 (Fourth Circuit holds that antishuttling violation not cognizable under Section 2254 because that provision protects only "statutory rights of a fundamental nature closely related to constitutionally secured rights to fair prosecution and adjudication"); *Metheny* v. *Hamby*, 835 F.2d 672, 675 (6th Cir. 1987) (joining the "clear majority" of courts in "holding that, in the absence of exceptional circumstances, a claimed violation of [the antishuttling provision of] the IAD is not a fundamental defect which is cognizable under 28 U.S.C. § 2254"), cert. denied, 488 U.S. 913 (1988); *Mars* v. *United States*, 615 F.2d 704, 707 (6th Cir.) (relief under Section 2255 not available for violation of IAD's antishuttling provision in absence of proof that violation "impugned the integrity of the fact finding process at [petitioner's] trial" or caused harm "in his defense to the pending federal charge or to his status in the state prison system"), cert. denied, 449 U.S. 849 (1980); *Shigemura* v. *United States*, 726 F.2d 380, 381 (8th Cir. 1984) (per curiam) (violation of antishuttling provision not cognizable under Section 2255 in the absence of proof that the violation "prejudiced [the prisoner] in some aspect of his state imprisonment or in defending against a federal charge"); *Huff* v. *United States*, 599 F.2d 860, 862-863 (8th Cir.) (relief under Section 2255 not available for violation of antishuttling provision without proof of prejudice), cert. denied, 444 U.S. 952 (1979); *Greathouse* v. *United States*, 655 F.2d 1032, 1034 (10th Cir. 1981) (per curiam) ("[a]bsent special circumstances, violations of the IAD[ ] are not grounds for collateral attack on a federal conviction and sentence under § 2255"), cert. denied, 455 U.S. 926 (1982).

Despite the Third and Ninth Circuits' differing treatment of different types of IAD violations, the lower courts' application of the *Hill* standard has resulted in a broad consensus with respect to the question presented here. The great majority of the courts have held that a violation of one of the speedy trial provisions of the IAD does not constitute "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure" under the *Hill* standard. As we discuss next, that answer is correct.

B. Under The *Hill* Standard, Collateral Review Of A Claim Based On Article IV(c) Of The IAD Is Not Available In The Absence Of Proof Of Actual Prejudice

It may be difficult to devise a simple formula that would for all purposes serve to identify a "fundamental defect" resulting in a "complete miscarriage of justice." This Court's decisions involving collateral review of non-constitutional claims, however, suggest that, at the least, that standard requires proof that the error in question led to actual prejudice to the defendant.

Although the Court has not used the term "actual prejudice" in the *Hill* line of cases, the Court's analysis of the claims in those cases points to actual prejudice as a prerequisite for relief in each case. The petitioner in *Davis* claimed that he was "convict[ed] and punish[ed] * * * for an act that the law does not make criminal," a clear instance of an error that resulted in actual prejudice to the defendant, since the conviction and sentence were no longer lawful. 417 U.S. at 346. The Court had little difficulty in concluding that such a claim, if valid, involves a "complete miscarriage of justice" and accordingly held that the claim was cognizable. *Id.* at 346-347.

The Court reached the opposite conclusion in *Hill* and *Timmreck* based in large part on the absence of proof of

actual prejudice. In *Hill*, the Court emphasized that the district judge's "failure explicitly to afford a defendant an opportunity to make a statement at the time of sentencing," 368 U.S. at 426, as required by Fed. R. Crim. P. 32(a), was not shown to have affected the proceeding (368 U.S. at 429):

> It is to be noted that we are not dealing here with a case where the defendant was affirmatively denied an opportunity to speak during the hearing at which his sentence was imposed. Nor is it suggested that in imposing the sentence the District Judge was either misinformed or uninformed as to any relevant circumstances. Indeed, there is no claim that the defendant would have had anything at all to say if he had been formally invited to speak. Whether § 2255 relief would be available if a violation of Rule 32(a) occurred in the context of other aggravating circumstances is a question we therefore do not consider.

The Court in *Timmreck* similarly noted that, notwithstanding the trial judge's failure to advise him of a special parole term when he entered a guilty plea, as required by Fed. R. Crim. P. 11, "[r]espondent does not argue that he was actually unaware of the special parole term or that, if he had been properly advised by the trial judge, he would not have pleaded guilty." 441 U.S. at 784. Thus, as in *Hill*, the Court in *Timmreck* found it "unnecessary to consider whether § 2255 relief would be available if a violation of [the Rule] occurred in the context of other aggravating circumstances." 441 U.S. at 784-785.

Similarly, in *Addonizio* the Court found no "fundamental defect" in a change in the Parole Commission's treatment of particular classes of prisoners, which was alleged to have upset the expectations of the sentencing court. Finding that a "judge has no enforceable expectations with respect to the

actual release of a sentenced defendant short of his statutory term," 442 U.S. at 190, the Court concluded that the Parole Commission's actions did not affect the validity of the sentencing proceeding. Put another way, the Parole Commission's action did not give rise to prejudice with respect to any right that the defendants enjoyed as to sentencing.

In arguing that proof of actual prejudice is not required for collateral relief in this case, petitioner relies primarily on Article V(c) of the IAD. See Pet. Br. 36-38. That Article states that in the event of a violation of the 120-day or 180-day speedy trial provisions of the IAD, the court before which the charges are pending "shall enter an order dismissing the same with prejudice." See 18 U.S.C. App. § 2, at 704.

Although Article V(c) provides a remedy of automatic dismissal in the event of a violation of the speedy trial provisions, it does not address the quite separate question whether relief for violations of the speedy trial provisions is available on collateral attack. Nor does any other provision of the IAD address the availability of collateral relief for violations of the speedy trial provisions.[10] That matter is accordingly governed by the principles for collateral relief developed by this Court under Sections 2254 and 2255, one of which is that collateral relief is not available for non-constitutional claims absent proof of actual prejudice.

Petitioner also argues (Br. 37) that the mandatory dismissal sanction prescribed in Article V(c) reflects both Congress's judgment that all violations of the speedy trial

[10] Petitioner's reliance (Br. 24, 30) on Section 5 of the federal Act that codifies the IAD (IAD Act), 18 U.S.C. App. § 5, at 705, is misplaced. That provision merely directs the federal courts and those of the District of Columbia to "enforce" the IAD. It does not address the question of how the speedy trial provisions of the IAD are to be enforced on collateral review. Thus, it has no bearing on the question presented here.

provisions should be treated as "fundamental defects," and Congress's awareness of the difficulties of proving actual prejudice resulting from such violations. This Court's decisions in *McCarthy* and *Timmreck* demonstrate the flaw in that argument.

In *McCarthy*, this Court exercised its supervisory power to adopt a drastic and mandatory remedy for violations of Rule 11 of the Federal Rules of Criminal Procedure, which requires the court to which a defendant tenders a guilty plea to provide the defendant with certain information and to ask him personally to answer certain questions before accepting his plea. 394 U.S. at 464. The Court held that "a defendant is entitled to plead anew if a United States district court accepts his guilty plea without fully adhering to the procedure provided for in Rule 11." *Id.* at 463-464. The Court emphasized that its holding applies regardless of whether the violation of Rule 11 has affected the defendant's understanding of the charges or the consequent voluntariness of his plea. *Id.* at 468-472. In adopting an automatic set-aside remedy, the Court reasoned that "rarely, if ever," can a defendant produce evidence to corroborate his allegation that he did not understand the charges, and that "Rule 11 is designed to eliminate any need to resort to a later fact-finding proceeding in this highly subjective area." *Id.* at 469 (internal quotation marks omitted). The Court accordingly concluded that "prejudice inheres in a failure to comply with Rule 11" and justifies the automatic set-aside remedy for every instance of noncompliance. *Id.* at 471.

In *Timmreck*, the Court was again confronted with a claimed violation of Rule 11, but this time the claim was asserted on collateral review. The Court did not hold that the automatic set-aside remedy was available on collateral review of such claims. On the contrary, it held that "collateral relief is not available when all that is shown is a failure to comply with the formal requirements of the Rule." 441 U.S. at 785 (quot-

ing *Hill*, 368 U.S. at 429). The Court thus was not willing to conclude, as it had been on direct review in *McCarthy*, that "prejudice inheres in a failure to comply with Rule 11." 394 U.S. at 471.

Timmreck makes clear that the mandatory dismissal remedy prescribed in Article V(c) of the IAD does not justify dispensing with proof of actual prejudice on collateral attack. That remedy may reflect Congress's wish in criminal proceedings initiated under the IAD generally to avoid fact-finding proceedings into the prejudicial impact, if any, of violations of the IAD's speedy trial provisions.[11] The automatic set-aside remedy for Rule 11 violations adopted in *McCarthy* likewise implemented Congress's intent in federal criminal proceedings to avoid factfinding regarding whether a defendant's guilty plea was knowing and voluntary. The Court in *Timmreck*, however, made clear that the existence of such remedies in criminal proceedings does not control the availability of relief in collateral proceedings.

[11] It is significant that the mandatory dismissal remedy prescribed in Article V(c) does not automatically require that the dismissal be with prejudice when the United States is the "receiving State"—*i.e.*, when a prisoner has been transferred from state to federal custody pursuant to the IAD for trial on federal charges—and a violation of the IAD's speedy trial provisions occurs. In that situation, Section 9(1) of the IAD Act directs the court in which the charges are pending, when determining whether to dismiss the charges with prejudice or without prejudice, to consider, among other factors, "the facts and circumstances of the case which led to the dismissal." See 18 U.S.C. App. § 9(1), at 705. Section 9(1) thus reflects Congress's judgment that violations of the IAD's speedy trial provisions are not inherently so serious as to warrant automatic dismissal of federal charges with prejudice in criminal proceedings under the IAD. It therefore undermines petitioner's position that relief for such a violation should automatically be granted in a collateral proceeding.

C. Petitioner Does Not, And Cannot, Show That He Suffered Actual Prejudice As A Result Of The Asserted Violation Of Article IV(c) Of The IAD

Nowhere in his petition or his brief does petitioner contend that he suffered actual prejudice as a result of Indiana's failure to bring him to trial within the 120-day period prescribed in Article IV(c) of the IAD. Although petitioner did make such a contention in his reply brief at the petition stage (at 5-6), that contention was based solely on his assertion that "[a]bsent the Indiana detainer, petitioner would have been in a federal community center while he was awaiting trial," where he "would have had greater access to law materials and potential witnesses." Pet. Rep. Br. 5. Those supposed restrictions, however, were attributable to the detainer that was filed against him, which caused him to be transferred from federal to state custody; the restrictions did not result from any delay in bringing him to trial. Thus, petitioner does not point to any actual prejudice that he suffered because of the State's asserted violation of Article IV(c) of the IAD.

The kind of prejudice necessary to grant relief for a violation of a "law of the United States" raised on collateral attack is prejudice that significantly undermines the reliability of the adjudication. In order for an error to constitute "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure," it must, at the least, be sufficiently grave to cause a significant increase in the risk of an inaccurate verdict at trial.

That is the sense in which the terms "actual prejudice" and "miscarriage of justice" have been used in other settings in habeas corpus law. See *McCleskey* v. *Zant*, 499 U.S. 467, 502 (1991) (no "miscarriage of justice" where error, if any, "resulted in the admission at trial of truthful inculpatory evidence which did not affect the reliability of the guilt determination"); see also *Sawyer* v. *Whitley*, 112 S. Ct. 2514,

2519 (1992); *Reed* v. *Ross*, 468 U.S. 1, 12 (1984). And that is also the sense in which the concept of prejudice has been used in collateral attacks based on violations of the IAD. See *Seymore* v. *Alabama*, 846 F.2d 1355, 1357 (11th Cir. 1988) (speedy trial violations not cognizable absent proof of "facts casting substantial doubt on the state trial's reliability on the question of guilt"), cert. denied, 488 U.S. 1018 (1989); see also *Bush* v. *Muncy*, 659 F.2d 402, 409 (4th Cir. 1981), cert. denied, 455 U.S. 910 (1982); *Fasano* v. *Hall*, 615 F.2d 555, 558 (1st Cir.), cert. denied, 449 U.S. 867 (1980).

A violation of the speedy trial provisions of the IAD is unlikely ever to result in actual prejudice to the defendant's right to a fair trial. The speedy trial provisions have relatively short time limits—120 days and 180 days. See note 2, *supra*. Violations of those time limits that do not also violate the Sixth Amendment's Speedy Trial Clause are not likely to be prejudicial, because delays of that length are unlikely to result in a significant impairment of the defendant's ability to defend himself at trial. Only that kind of prejudice implicates the "fundamental fairness" of the process for adjudicating criminal liability, which is "the central concern of the writ of habeas corpus." *Murray* v. *Carrier*, 477 U.S. 478, 496 (1986).

As discussed above, petitioner does not allege that Indiana's delay in bringing him to trial impaired his ability to prepare a defense. No showing of such harm could be made on this record. Petitioner was brought to trial approximately seven weeks after he claims that the 120-day period prescribed in Article IV(c) had expired. As the district court found, much of that delay was attributable to litigation of petitioner's numerous pretrial motions. J.A. 195-196. Moreover, four of the seven weeks elapsed pursuant to a continuance to which petitioner consented. See Pet. Br. 7 n.2. Finally, petitioner was released on bond after the first four weeks of the seven-week period. *Ibid.* Under these circumstances, petitioner cannot establish that the alleged violation of Article IV(c) of the

IAD was a "fundamental defect" that resulted in actual prejudice constituting a "complete miscarriage of justice." Petitioner therefore may not collaterally attack his conviction.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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